

Amarillo Penalty Rule Stakeholder's Meeting
Panhandle Regional Planning Commission, 415 W. Eighth Avenue
November 4, 2005
10:00 am thru 2:00 pm
Meeting Summary

I. Welcome and Introductions

Jody Henneke, TCEQ Office of Public Assistance, opened the meeting by introducing TCEQ staff Anne Dobbs, Special Assistant to the Director of the Enforcement Division; John Gillen, Office of Public Assistance; and Brad Jones, Regional Director, Region 1 - Amarillo.

The following introductory remarks were made by Ms. Henneke: The purpose of this meeting is for the TCEQ to take comments on the penalty policy. Comments may also be submitted in writing through December 19, 2005. Following the meetings, Anne Dobbs will post meeting summaries and a list of attendees on the web site.

II. Scope of the Proposed Rule

Anne Dobbs explained that the Commission has recently undertaken a comprehensive review of the Agency's enforcement process. This review covered everything from investigation through enforcement initiation criteria and what should go into a final order, including the penalty calculation. The review included input from stakeholders, similar to this process, including the regulated community, interested citizens, environmental groups, etc. One of the outcomes of this review process is that the Commissioners have directed the Executive Director to begin the rule-making process to adopt the current penalty policy into a rule. This rule making will address how penalties will be calculated but will not address when an enforcement action should be initiated.

The rule making will take each of the factors that the statute requires the Commission to consider when assessing an administrative penalty (i.e., nature and extent of the violation, economic benefit gained, good faith efforts to correct the violation, compliance history, etc.) and will specify how those factors will be applied to the penalty calculation. The Commission specifically directed staff to conduct stakeholder meetings prior to initiating formal rule making. What this means is that the Commission's position regarding this rule making is undecided at this time. The Commission is interested in receiving comments on the background materials that have been posted on the web, which include six main issues raised during the review process, the current penalty policy, and a list of examples of violations that could be included as standard penalties.

Once all comments have been received (written comments will be taken until December 19, 2005), a proposal will be drafted for approval by the Commission, then the proposal will be published in the Texas Register for a 30-day comment period. There may be a hearing held during the comment period. After that the Commission has 6 months to publish a final rule in the Texas Register.

III. Procedural Ground Rules

Attendees were asked to sign in and were told that Email addresses provided could become part of the public record. Attendees were invited to come to the microphone, provide their name, whether or not

they are representing a company or organization, and to provide any comments that they would like. The meeting will be summarized and placed on the web site.

IV. Opportunity for Comments on the Major Elements of the Proposed Rule or Related Issues

The following comments were received:

Is the intent of this project to modify & structure the penalty policy so that there is some predictability to the process? Is the rule going to take into account the size of the entity that is under enforcement? TCEQ staff indicated that the intent of the project is to take the current penalty policy, incorporate changes that the Commissioners feel will improve it, and make it a formal rule. There has been no final decision yet on exactly how small businesses or local governments will be handled, however, that is something that is being considered.

The standard penalties have some requirements listed that are not in the rules now (e.g., failure to label emission points, backup generators, etc). There was a concern about why these would be standard penalties. Staff indicated that the information in the standard penalty tables was put together as a starting point. No decisions have been made as to which violations will be included and attendees were encouraged to provide specific comments on the standard penalties. In addition, it was recommended that it will be important to carefully review the proposed rule

One of the things that the rule should retain is the way that the calculation looks at harm to the environment versus recordkeeping.

An issue was raised regarding the statewide enhancement due to the performance of another facility in the State. It was recommended that this enhancement to the penalty be discontinued.

Another issue is that there are inconsistencies throughout the State (from Region to Region) regarding similar instances - some are more stringent and some are less stringent.

A question was raised about EPA consent decree enhancements and whether or not there is a difference in the calculation if the consent decree is a joint State/EPA decree or if it is just an EPA consent decree.

An issue was raised regarding the number of NOV's sent (original versus follow-up) and how they may be counted as additional NOV's for compliance history when they are really just follow-up letters. Could there be a category of NOV's rather than just counting all NOV's?

V. Closing Remarks

Jody Henneke reminded attendees that the web site would be maintained up-to-date with summaries and names of attendees for each of the six meetings. Attendees were told that the TCEQ staff would be here to take comments until 2:00 pm. They were also told that they were welcome to come talk to staff "off the record" but if they wanted to provide comments on the penalty policy and upcoming rule, then we would ask them to speak "for the record" and would turn the microphone and recorder back on.